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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,392	08/09/2001	Daniel T. Barber	7094-159	5175

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EXAMINER	
LIEU, JULIE BICHNGOC	
ART UNIT	**PAPER NUMBER**
2636	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/925,392	BARBER ET AL.	
	Examiner	Art Unit	
	Julie Lieu	2636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,12-21,23-28, 30, and 32-34* is/are rejected.

7)☒ Claim(s) *11,22,29 and 31* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 7/3/03 5/7/29/05 12/6/04
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is in response to Applicant's Response filed December 06, 2004. No claims have been amended, or canceled, or added.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "the monitoring circuits" lacks antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-9 and 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Lake (US Patent No. 6,515,591).

Claim 1:

Lake discloses a method, comprising:

a. installing a plurality of pest control devices including a respective bait for one or more species of pest, a pest sensor, and respective communication circuitry coupled to the pest sensor;

b. providing a stimulus (by interrogator 45) to one of the pest control devices to cause the respective communication circuitry to output information about the respective pest sensor; and

c. receiving information from on of the pest control devices in response to the stimulus.

Claim 2:

The pest control device includes a mechanical device, interrogator 45, that is actuated to provide the stimulus.

Claim 3:

The monitoring circuit includes a passive RF transponder 180 and the stimulus is in the form of a RF signal emitted by interrogator 45.

Claim 4:

Lake provides another stimulus to trigger operation of the communication circuitry of another of the pest control devices.

Claim 5:

The information in Lakes quantitizes an amount of consumption or displacement of the respective bait by the one or more species of pest.

Claim 6:

The bait for the pest control devices in Lake includes a pesticide.

Claim 7:

In Lake, the respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 8:

The sensing member in Lake includes a substrate with an electrically conductive loop configured to be altered by consumption or displacement by the one or more species of pest, the electrical monitoring circuit is operable to determine electrical continuity of the loop, and information about the sensing member corresponds to a two-state signal provided to the visual indicator by the electrical monitoring circuit, a first state of said signal representing an electrically closed condition of said loop and a second state of the signal representing an electrically open condition of the loop. Col. 4, last paragraph to col. 5, 2nd paragraph).

Claim 9:

The installing in Lake includes placing one or more of the pest control device at least partially below the ground.

Claim 25:

Lake discloses a system, comprising:

a. a plurality of pest control devices each including:

b. a bait operable to be consumed or displaced by one or more species of pest;

c. monitoring circuitry including a pest sensing circuit 118, an activation device and an indicating device 180, the activation device 180 being operable to selectively activate the monitoring circuitry as directed by an operator (operating interrogator 45) and the indicating device being operable to provide the operator information about the pest sensing circuit in response to activation of the monitoring circuitry with said activation device.

Claim 26:

The activation device 180 includes a switch operable to activate said monitoring circuitry.

Claim 30:

The device structure 116 of Lake's includes a housing at least partially enclosing the support structure, the bait, the pest sensing circuit, and the communication circuit, the activation device and the indicating device being mounted to the housing.

Claim 32:

The bait for the pest control devices in Lake includes a pesticide.

Claim 33:

In Lake, the respective bait is of a monitoring type selected for one or more varieties of termites.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 16-24, 27-29, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lake (US Patent No. 6,515,591).

Claim 16:

Lake discloses a pest control device, comprising:

d. a bait operable to be consumed or displaced by one or more species of pest;

e. a pest sensing circuit 118;

f. a communication circuit 180, coupled to the pest sensing circuit, the communication circuit including an activation device to trigger interrogation of the pest sensing circuit with the communication circuit and an indicating device (part of the transponder circuit), to provide information about said pest sensing circuit determined in response to the interrogation; and

g. a structure 160 operable to position the bait, the pest sensing circuit, and the communication circuit in a predetermined spatial relationship relative to one another.

Though the reference fails to clearly state an activation device included in the communication circuit to trigger the interrogation, it would have been obvious that such feature is included in the transponder 180 because the transponder is a passive transponder, some type of activation device to activate the transponder circuit to transmit information would be obviously included in the device.

Claim 17:

It would be obvious to one skilled in the art that the activation device of transponder includes a switch operable to activate the communication circuit because the transponder is a passive transponder, it needs some type of activation device, such as a switch to activate the transponder circuit to transmit information.

Claims 18 and 19:

The indicating device in Lake does not include a visual indicator. Nonetheless, it would have been obvious to one skilled in the art to use a visual indicator in addition to the indicating

device in Lake, such as a light emitting component to provide indication to a user at the location where in the sensor and bait is actually located as desired because it provide indication to a user just by looking at the device at a local site where a termite control device is placed.

Claim 20:

The rejection of claim 20 recites the rejection of claim 13.

Claim 21:

As discussed above in activation device is a switch. Further, the use of an LED as an indicating device is conventional in the art, thus, one skilled in the art would have used it as an indicating device in Lake. The details of the communication circuit in Lake's is not shown; therefore, it is not clear if the communication circuit includes a transistor and a power source selectively coupled together by switch. However, it would be within the knowledge of a skilled artisan to use any circuit configuration, such as one as claimed, to achieve the desired result.

Claim 22:

The device structure 116 of Lake's includes a housing at least partially enclosing the support structure, the bait, the pest sensing circuit, and the communication circuit, the activation device and the indicating device being mounted to the housing.

Claim 23:

The bait in Lake includes a pesticide.

Claim 24:

The bait in Lake is of a monitoring type selected for one or more varieties of termites.

Claim 27:

The indicating device in Lake does not include a visual indicator. Nonetheless, it would have been obvious to one skilled in the art to use a visual indicator in addition to the indicating device in Lake, such as a light emitting component to provide indication to a user at the location where in the sensor and bait is actually located as desired because it provide indication to a user just by looking at the device at a local site where a termite control device is placed.

Claim 28:

The rejection of claim 28 recites the rejection of claim 13.

Claim 29:

The rejection of claim 29 recites the rejection of claim 27.

Claim 31:

The activation device and indicating device in Lake are mounted in the housing.

Claim 34:

It is not clear in Lake that the pest sensing circuit 118 is carried on a substrate operable to be selectively connected and disconnected from the monitoring circuitry. Nonetheless, it would have been obvious to one skilled in the art to provide a transponder which is separate from the monitoring circuit and selectively connected and disconnected from the monitoring as desired because it would allow the transponder to be used interchangeably with other monitoring circuits of other pest control device.

7. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lake (US Patent No. 6,515,591) in view of Creeger et al. (US Patent No. 5,874,726).

Claim 10:

Lake discloses a first pest control system, comprising: a first pest control device including a first bait operable to be consumed or displaced by one or more species of pest, a first pest sensing 118, a first electrical monitoring circuit to monitor status of said first pest sensing member and a first indicating device (transponder, col. 7, 3rd paragraph) responsive to an output from said first electrical monitoring circuit to provide information about the first pet sensing member.

Lake discloses a plurality of pest control devices which means a second pest control device is included in the system.

Regarding the claimed activation device operable to trigger operation of the electrical monitoring circuit, such activation is old and well known in the art as taught in Creeger et al., wherein the use of a switch 10 remotely operable to activate a pest controlling device when desired by a user is disclosed. In light of this teaching a skilled artisan would have readily recognized the use of an activation device, or a switch, as taught in Creeger in the Lake system because it would provide versatility of the device.

Claim 11:

The pest control device in Su further includes an enclosure 110 at least partially enclosing the bait, the pest sensing member, and the electrical monitoring circuit. The activation device and the indicating device in the combined system of Lake and Creeger would be mounted to the enclosure.

Claim 12:

The activation device in this combined system includes a switch 10. The indicating device in Lake does not include a visual indicator. Nonetheless, it would have been obvious to

one skilled in the art to use a visual indicator in addition to the indicating device in Lake to provide indication to a user at the location wherein the sensor and bait is actually located as desired because it provide indication to a user just by looking at the device at a local site where a termite control device is placed.

Claim 13:

The sensing member in Lake includes a substrate with an electrically conductive loop configured to be altered by consumption or displacement by the one or more species of pest, the electrical monitoring circuit is operable to determine electrical continuity of the loop, and information about the sensing member corresponds to a two-state signal provided to the visual indicator by the electrical monitoring circuit, a first state of said signal representing an electrically closed condition of said loop and a second state of the signal representing an electrically open condition of the loop. Col. 4, last paragraph to col. 5, 2nd paragraph.

Claim 14:

The bait used in Lake includes a pesticide.

Claim 15:

The bait in Lake is of a monitoring type selected for one or more varieties of termites.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Su, US Patent No. 5,815,090.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu
Primary Examiner
Art Unit 2636

Oct. 14, 05